

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

GIBSON GUITAR CORPORATION,

Plaintiff,

v.

WAL-MART STORES, INC. *ET AL.*,

Defendants.

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Case No. 3:08cv0279

Judge Thomas A. Wiseman, Jr.

ORDER

Presently pending in this matter are two motions: (1) the Motion to Dismiss or Stay (Doc. No. 37) filed by defendants Amazon.com, GameStop, Kmart, Sears, Target, Toys-R-Us and Wal-Mart (collectively, the "Retailer Defendants"); and (2) the Motion to Stay Pending the U.S.P.T.O.'s Reexamination of the Patent in Suit (Doc. No. 53), filed by defendants Harmonix Music Systems, Inc. ("Harmonix"), Electronic Arts, Inc. ("EA") and Viacom International Inc. ("Viacom") (collectively, the "Viacom Defendants") in which the Retailer Defendants have joined. Also before the Court is the Viacom Defendants' Motion for Hearing on their motion to stay (Doc. No. 60).

The Court, having determined that it can decide the issue on the basis of the written briefs and that oral argument will not assist it in deciding the motions, hereby **DENIES** the motion for hearing (Doc. No. 60).

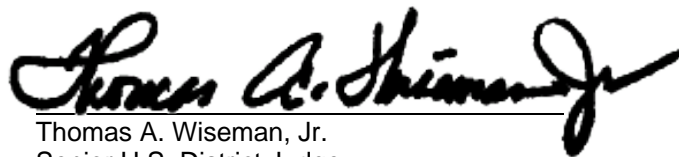
Further, for the reasons explained in the accompanying Memorandum Opinion, the Court finds it appropriate, in deference to the United States District Court for the Central District of California, to grant the Retailer Defendants' motion insofar as they seek to stay those claims related to the Guitar Hero Video Games. The Court also finds that a complete stay of all remaining matters (e.g., those related to Rock Band) pending the U.S.P.T.O.'s reexamination of the patent in suit is appropriate to avoid duplicative action and conserve judicial resources.

Accordingly, the Motion to Dismiss or Stay (Doc. No. 37) is hereby **GRANTED** in part, insofar as the Court hereby **STAYS** those claims asserted against the Retailer Defendants pertaining to the sale of the Guitar Hero Products pending resolution in *Activision Publishing Inc. v. Gibson Guitar Corp.*, Case

No. CV08-01653 (C.D. Cal.) of the issues of patent validity and infringement. The Retailer Defendants shall file a status report in this Court every six months beginning from entry of this Order regarding the status of the proceedings in the California Action, and any party may move to lift the stay once the California Court has resolved the validity and infringement issues.

The Viacom Defendants' motion to stay the remaining claims in this matter pending the U.S.P.T.O.'s reexamination of the patent in suit is hereby **GRANTED**. The Viacom Defendants shall file a status report in this Court every six months regarding the status of the proceedings before the U.S.P.T.O., and any party may, upon good cause, file a motion to lift the stay.

It is so **ORDERED**.



Thomas A. Wiseman, Jr.
Senior U.S. District Judge